IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10747 OF 2004

Dr.Sadiq Khan. ... ... Petitioner
V/s.
State of Maharashtra & ors. ... Respondents

Mr.S.G. Aney, Senior Advocate with Mr.L.M.Acharya for petitioner.

Mr.Nargolkar, AGP for res.Nos.1 & 2.

Ms.Jyoti Pawar for res.No.4.

Mr.R.A. Rodrigues for res.No.3.

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**CORAM : H.L. GOKHALE &**
**S.P. KUKDAY, JJ.**

**DATE :14th June 2005**

**ORAL ORDER : (Per H.L. Gokhale, J.)**

1. Heard the learned Counsel for the parties.

2. The petitioner is a student, who has taken admission in the 4th respondent-Mahatma Gandhi Medical College, Navi Mumbai, for Diploma in Orthopaedics. It is his case that he had been admitted by this College in pursuance of the approval granted by the Government of India and the Government of Maharashtra. He was selected for a seat in this course after the Central admissions procedure conducted by respondent No.2-DMER and was admitted in August 2003. The University of Mumbai subsequently informed him by its letter dated 24th November 2003 that the

Diploma Course had not been introduced in the University till then and the eligibility certificate which had been issued to him in the meanwhile by the University was issued inadvertently. This letter has also drawn the attention of the petitioner that the College had been intimated by the University's letter dated 4th March 2003 not to enrol any student to this Course. The petitioner seeks to challenge this communication dated 24th November 2003. He also seeks to challenge the subsequent letter dated 30th June 2004 addressed to the College and the resolution of the Academic Council dated 18th June 2004 approving the course only from the academic year 2004-2005.

3. Mr.Aney, learned Counsel appearing for the petitioner, submitted that this course was approved by the Government of India on 5.12.2002 The State Government approved it by its letter dated 26th December 2002 and in that letter, the State Government stated that the particular course was approved from the year 2002-03. It is, however, material to note that the last sentence of this letter stated that the steps with respect to the admission be taken after the affiliation is received for this course for the University and in

accordance with the approved capacity for admission. Mr.Aney submitted that the petitioner has passed the M.B.B.S. examination from the Nagpur University. Thereafter he was selected in the Central Admissions procedure in August 2003 and bona fide took admission in this college. He paid the fees on 8th August 2003. The college asked him to get the eligibility certificate and the University issued to him the provisional statement of eligibility dated 28th August 2003. It is much later i.e. on 22nd / 24th November 2003 that the University informed him that the course had not been approved as stated in the note at the bottom of that letter by referring to the University's letter dated 4th March 2003 addressed to the college and, therefore, the eligibility certificate was withdrawn. Mr.Aney submitted that there is no fault on the part of student in any way and should not be made to suffer. He further submitted that if the college had the necessary facilities for the Master's Degree and if the Diploma Course had been allotted to it and approved by the Government of India and the State Directorate of Medical Education, there was no reason for the University not to approve it and to decide to run the course from 2004-05 only. Mr.Aney submitted that grave prejudice is being

caused to the petitioner and the University ought to be directed to allow the petitioner to appear for examination on the footing that he has completed the course in the academic years 2002-03 and 2003-04. He further submitted that the University has nothing particular to do in these matters and the facilities at the college etc. are examined by other Authorities. The University is only an examining body and the interest of the education requires that the University should not be permitted to dictate in this particular fashion.

4. Ms.Pawar, learned Counsel appearing for respondent No.4-College, submitted that the college had acted in good faith. The college had a clearance from the Central and State Governments. Although the college did receive the withdrawal letter dated 4th March 2003 from the University indicating it subsequently received another letter dated 25th August 2003 from the Special Cell at the University which stated that admissions for this course are to be conducted as per the reservation policy. She, therefore, submitted that the petitioner should be permitted to appear for the examination on the footing that he has cleared the course during two years. The

Dean of the College, in paragraph 10 of his affidavit, has, however very fairly stated that the college has not made any admission to this course for the academic year 2004-05 and if the University does not grant permission to the students for the earlier academic years, the petitioner and such students will be treated as admitted for the academic years 2004-05 and 2005-06. Mr.Aney and Ms.Pawar have stated that the petitioner has worked as houseman in the meanwhile and has completed his necessary training for being eligible to appear for the examination.

5. Mr.Nargolkar, learned AGP appearing for the State Government, has explained the circumstances in which the Government granted approval to the running of this course in this college. An affidavit has been filed by one Shri Gaikwad, Administrative Officer, Director of Medical Education and Research, Mumbai, wherein he has pointed out that initially the University had granted permission by earlier letter dated 31st December 2002. Mr.Nargolkar submitted that the cancellation letter dated 4th March 2003 was not forwarded to the Director of Medical Education.

6. Mr.Rodrigues, learned Counsel appearing

for respondent No.3-University, pointed out that in the instant case the college was clearly told by the letter dated 4th March 2003 that the earlier permission granted in the letter dated 31st December 2002 was by inadvertence. The letter of 4th March 2003 clearly states that the Diploma has yet been introduced by the University and, therefore, the college cannot be permitted to enrol the students for this course unless the same is duly approved and introduced in the University, even though the earlier letter dated 31st December 2002 stated to the contrary. Mr.Rodrigues submitted that it is for the University to decide which courses it should conduct. For that purpose, the Academic Council has to take a decision. This is a academic matter within the purview of the Academic Council and the Academic Council in its meeting held on 18th June 2004 resolved to introduce this course from the academic year 2004-05. Not only that but in the decision of the Academic Council the request of respondent No.4-College to grant ex-post facto permission for admission for the year 2002-03 was rejected. Mr.Rodrigues has drawn our attention to the circular issued by the University along with its brochure starting the course from 2004-05. The brochure includes the provisions with respect

to the eligibility for registration, period for training and provisions containing the requirements for the examination viz. syllabus for the theory papers. As far as the Diploma in Orthopaedics is concerned, various subjects to be taught in the areas of Anatomy, Physiology, Biochemistry and Pharmacology have been spelt out. Various fractures and dislocations the student concerned is to learn to deal with, have been mentioned. The Course content includes studies of various orthopaedic diseases, infections, congenital anomalies and various other aspects of the studies. Mr.Rodrigues states that it is for the Academic Council to arrive at a decision with respect to content and conduct of the course and the University has to take a decision whether a particular course has to start from a particular year. Unless the University takes any such decision, the fact that the Central Government or the State Government has granted any approval to any such college, cannot be a material factor.

7. Mr.Rodrigues pointed out that the eligibility letter issued to the petitioner was a provisional one. It is issued by the concerned section after looking into the documents of the student such as his M.B.B.S. Degree in the

routine course. Similar is the letter dated 25th August 2003 from the Special Cell of the University dealing with reservation policy. It is material to note that the letter refers to the earlier permission letter of the University dated 31.12.2002 but not the letter dated 4.3.2003 withdrawing the same. He submits that these letters cannot be pressed into service to do away with the approval of the Academic Council to the course which was granted only in 2004-2005.

8. We have considered the submissions of rival parties. In our view, the position is very clear. It is for the University to decide whether it will have a particular course and whether from a particular year, which is a matter of academics and the University takes a decision on the basis of recommendations of the Academic Council as provided under the Maharashtra Universities Act, 1994. It is none of the business of other Authorities, whether it is the Central Government or the State Government or any other private college such as respondent No.4 to dictate to the University on the basis of any such clearances given either by the Central Government or State Government that the courses should be started from a particular year or any such admissions effected

by the college should be regularised by the University. It is a academic matter and the autonomy of the University has to be recognised. The Central Government and the State Government are not expected to take any steps which will undermine the autonomy of the University in any manner whatsoever. The University has to decide whether a particular course should be started, what should be its content, duration, syllabus and other requirements. In the circumstances, it is not possible to accept the submissions of the petitioner's Counsel to look into the decision making process of the University and as to why the University granted approval only from 2004-05 and not from the year 2002-03. Mr.Rodrigues appearing for the University has pointed out that there are many areas in medicines where the University of Mumbai even now does not have Degree Courses and Diploma Courses which are perhaps available in the other Universities. That is the decision to be arrived after considering factors such as the facilities available, expectations of the students, availability of the teachers in various colleges and various other academic matters.

9. It is seen from the petition that after receiving the letter dated 24th November 2003 from

the University, the petitioner made a representation to it on 19.1.2004 which was replied by the University on 4.2.2004. In both the letters dated 24.11.2003 and 4.2.2004, the University referred to its letter dated 4.3.2003 which stated that the college was not to admit any students in the course since the University itself had not taken any decision to start it. In fact, the college should not have admitted the petitioner in August 2003 when it clearly knew in March 2003 that the course was yet not approved by the Academic Council. It is, however, seen that the college was bent upon pursuing a wrong path. It is also seen that the petitioner also took his own time to ultimately file the petition one year later i.e. on 13.12.2004.

10. Entertaining this petition will mean compounding this folly. In the circumstances, we dismiss this petition.

11. Although the petition is dismissed, as far as the petitioner-student is concerned, he will be deemed to be admitted for the academic year 2004-05 as the college has stated in its affidavit that it is agreeable to accommodate him in that year. He will be allowed to appear for the

examination when he completes his two years' course. The University will undoubtedly register him as admitted during the academic year 2004-05.

**(H.L. GOKHALE, J.)**

**(S.P. KUKDAY, J.)**